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 on behalf of himself and all others similarly situated

ADDITIONAL COUNSEL ON NEXT PAGE

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

RICARDO BERMUDEZ  
 VAQUERO, on behalf of himself  
 and all others similarly situated,

Plaintiff,

v.

ASHLEY FURNITURE  
 INDUSTRIES, INC., a Wisconsin  
 Corporation; STONELEDGE  
 FURNITURE LLC, a Wisconsin  
 Limited Liability Corporation, and  
 DOES 1 through 10, Inclusive,

Defendants.

) Case No.: 2:12-cv-08590-PA-MAN  
 ) Honorable Percy Anderson  
 ) Courtroom 15

**CLASS ACTION**

**JOINT EX PARTE APPLICATION  
 TO STAY ACTION PENDING  
 CLASS-WIDE SETTLEMENT IN  
 THE RELATED ACTION  
 CURRENTLY PENDING IN STATE  
 COURT ENTITLED *VAQUERO, ET  
 AL. V. STONELEGE FURNITURE*;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

) Action filed: August 24, 2012  
 ) Trial date: November 26, 2013

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1 Plaintiff RICARDO BERMUDEZ VAQUERO, on behalf of himself and all  
 2 others similarly situated (“Plaintiff”), and Defendant Stoneledge Furniture, LLC  
 3 (“Defendant”) hereby jointly apply, *ex parte*, to this Court for a stay of the action  
 4 based on the following:

### 5 **JOINT EX PARTE APPLICATION**

#### 6 **A. Relevant Procedural History**

##### 7 **1. This Action (*Vaquero I*).**

8 On August 24, 2012, Plaintiff Ricardo Bermudez Vaquero (“Plaintiff”) filed  
 9 the instant action against Stoneledge Furniture LLC<sup>1</sup> alleging various putative class  
 10 wage and hour claims (“*Vaquero I*”). The case was timely removed to this Court  
 11 on September 17, 2012. In *Vaquero I*, Plaintiff is prosecuting certified minimum  
 12 wage and derivative wage statement and civil penalty claims on behalf of Sales  
 13 Associates working at Stoneledge retail furniture stores in California through  
 14 March 29, 2014. Plaintiff primarily alleged that the commission-only pay structure  
 15 utilized by Defendant to pay its Sales Associates through March 29, 2014 failed to  
 16 properly compensate Sales Associates for all activities, including those they  
 17 alleged were not related to sales.

18 On June 17, 2013, this Court granted, in part, Plaintiff’s motion for class  
 19 certification. (*See* Dkt. #48). That certification decision was appealed to the Ninth  
 20 Circuit by Defendant, and on June 8, 2016, the Ninth Circuit affirmed this Court’s  
 21 decision.

22 On August 26, 2016, this Court stayed this action pending resolution of the  
 23 appeal in the related case entitled *Ricardo Bermudez Vaquero and Robert*  
 24 *Schaefer, v. Stoneledge Furniture, LLC*, California Court of Appeal Case No.  
 25 \_\_\_\_\_

26 <sup>1</sup> Plaintiff also initially filed this action against Ashley Furniture Industries, Inc.,  
 27 but that entity was dismissed by the Court pursuant to a stipulation by the Parties.  
 28 (*See* Dkt. #60).

1 B269657 (“*Vaquero II*”). (Dkt. No. 120).

2 On September 22, 2017, this Court issued an opinion (Dkt. #144) on  
3 Plaintiff’s Motion for Partial Summary Judgment (Dkt. #133) and Defendant’s  
4 Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment  
5 (Dkt. #131), denying Plaintiff’s motion and granting and denying, in part,  
6 Defendant’s motion.

7 On October 3, 2017, this Court set trial in this action to commence on  
8 December 12, 2017, and also ordered the Parties to complete a settlement  
9 conference by October 23, 2017. (Dkt. #145)

10 2. *Vaquero II*.

11 On September 30, 2013, Plaintiff and another former Sales Associate,  
12 Robert Schaefer, filed a second lawsuit against Stoneledge in California state court.  
13 Los Angeles Superior Court Case No. BC522676 (“*Vaquero II*”). *Vaquero II*  
14 alleges that the Sales Associates who comprise the class in *Vaquero I* who were  
15 paid primarily on a draw/commission basis were not properly compensated for rest  
16 periods. *Vaquero II* alleges a substantive claim for rest break violations pursuant  
17 to Labor Code section 226.7, as well as a claim for waiting time penalties.

18 On October 7, 2014, pursuant to a stipulation between the Parties, the Court  
19 in *Vaquero II* certified a class of Sales Associates working at Stoneledge stores  
20 through March 29, 2014 – substantially the same class that is at issue in *Vaquero I*.

21 On December 29, 2015, the Court in *Vaquero II* granted Stoneledge’s  
22 motion for summary judgment and held that *Armenta* and its progeny did not apply  
23 to Stoneledge’s commission-only pay structure, and that its pay plan properly  
24 compensated Sales Associates for time spent taking rest periods.

25 On February 28, 2017, the California Court of Appeal issued its decision,  
26 reversing the trial court’s ruling granting summary judgment in favor of  
27 Defendant, and directing the trial court to enter a new order denying Stoneledge’s  
28 motion for summary judgment and Stoneledge’s motion for summary adjudication

1 on the cause of action for violation of section 226.7. On March 20, 2017, the Court  
 2 of Appeal modified its opinion, with no change in judgment. *Vaquero II* was then  
 3 remanded back to state court and it currently remains pending.

4 3. Mediation/Settlement Negotiations and A Global Settlement Reached  
 5 in *Vaquero I* and *Vaquero II*.

6 Since *Vaquero I* was first filed and after *Vaquero II* was filed, the Parties  
 7 participated in two formal mediations. At both mediations, the Parties at all times  
 8 were discussing resolution of both cases combined on a global basis. The second  
 9 mediation which occurred in late 2014 was presided over by experienced class  
 10 action mediator Robert J. Kaplan. Although that mediation did not result in a  
 11 resolution, Mr. Kaplan continued to work with counsel for the Parties to achieve a  
 12 global settlement of the cases.

13 On or about October 17, 2017, with the help of Mr. Kaplan, the Parties  
 14 finally agreed to a global class-wide settlement of all claims in both *Vaquero I* and  
 15 *Vaquero II*, subject to Court approval. On October 17, 2017, the Parties executed a  
 16 written Memorandum of Understanding detailing the primary terms of the global  
 17 class-wide settlement, and are currently working on a long form agreement.

18 **B. To Avoid Confusion to The Class Members in *Vaquero I* and *Vaquero II***  
 19 **and For Efficiency of the Courts, Approval Of The Settlement Should**  
 20 **Be Processed by The State Court in *Vaquero II* And This Action Should**  
 21 **Be Stayed Pending Same.**

22 Because: (i) the classes in *Vaquero I* and *Vaquero II* are substantially  
 23 overlapping; (ii) the claims in both cases are based on the same legal theory and  
 24 the same commission-only pay plan; and (iii) both cases have the same class and  
 25 defense counsel, the Parties when discussing potential settlement at all times were  
 26 discussing a global resolution of both cases.

27 Now that the Parties have indeed reached a global class-wide settlement of  
 28 both cases, they must proceed to have a court approve and process it. The Parties

1 believe that requiring them to process two separate settlements in both state and  
 2 federal court would be confusing to the settlement class members and would result  
 3 in significant inefficiencies.

4 First, if the global settlement were processed in two courts with independent  
 5 settlements, the settlement class members would receive two separate notices and  
 6 would likely result in substantial confusion.

7 Second, if the Parties had to proceed in two courts with two separate class-  
 8 wide settlements, they would naturally proceed on two different timelines which  
 9 would result in one settlement having to be delayed while the other was processed.  
 10 Further, if any objections are filed and potentially sustained, it is possible that one  
 11 settlement could wind up on appeal while the other must sit and wait.

12 Third, with two separate courts evaluating the fairness of the settlement,  
 13 there is the potential for conflicting rulings, not to mention the Parties utilizing the  
 14 resources of two courts for essentially the same purpose of evaluating the global  
 15 settlement. This would result in a waste of judicial resources.

16 Accordingly, the Parties agree that both cases should be jointly provided to  
 17 one tribunal to adjudicate all further proceedings regarding settlement and  
 18 dismissal of this matter. This would be in the interest of judicial economy and  
 19 preservation of the Court's and the parties' time and resources. And although the  
 20 Parties are confident that this Court could is more than capable of evaluating the  
 21 global class-wide settlement fairly, they believe that the Honorable Elihu M. Berle  
 22 in Department 323 of the Central Civil West complex courthouse of the Los  
 23 Angeles County Superior Court who is overseeing *Vaquero II* can do the same and  
 24 has the availability and capacity to adjudicate the fairness of the settlement without  
 25 any delay due to the nature of the complex department in Los Angeles County  
 26 Superior Court.

27 As such, the Parties hereby jointly request that this Court: (i) vacate all  
 28 pending dates in this action; (ii) stay this action pending approval and resolution of

1 the global settlement in *Vaquero I* and *Vaquero II*; (iii) require the Parties to  
2 submit joint status reports every 45 days to report on the status of the settlement;  
3 and (iv) require the Parties to report to this Court upon final approval of the  
4 settlement so that this action may be dismissed.  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. LEGAL ARGUMENT**

#### **A. This Court Has The Inherent Power to Stay This Action**

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936); *Lockyer v. Mirant Corp.*, 398 F. 3d 1098, 1110 (9th Cir. 2005); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *Ellison Framing, Inc. v. Zurich American Ins. Co.*, 805 F.Supp. 2d 1006, 1012 (E.D. Cal. 2011). Those interests include: (i) the possible damage that may result from the granting of a stay; (ii) the hardship or inequity which a party may suffer in being required to go forward; and (iii) the orderly course of justice measured in terms of simplifying or complicating of issues, proof, and questions of law which could be expected from the result of a stay. *Landis, supra*, 299 U.S. at 254-255.

Stays in district courts are routinely imposed when other courts are anticipated to address important and related legal matters at issue. *See, Hess v. Fremont Unified School Dist.*, 2009 WL 32519 (N.D. Cal. Jan. 5, 2009) (federal court action alleging wage/hour claims stayed pending resolution of a state court action involving similar issues and which had progressed further and was on appeal); *Ganezer v. DirectBuy, Inc.*, 571 F.3d 846 (9th Cir. 2009) (remanding with instructions to stay proceedings pending a decision by the United States Supreme Court in a related case); *McArdle v. AT & T Mobility LLC*, 2010 WL 2867305, at \*1-2 (N.D. Cal. July 20, 2010) (granting stay based on defendant’s argument that a decision in a similar case pending before the Supreme Court could require the district court to vacate any rulings, including any class certification, in the putative class action before it); *Gong-Chun v. Aetna, Inc.*, 2010 WL 1981175, at \*5 (E.D.



Cal. May 17, 2010) (case stayed pending the California Supreme Court's decision in *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, 53 Cal. 4th 1004 (2012)); *Lew v. Countrywide Financial Corp.*, 2009 WL 1384975 (N.D. Cal. Feb. 24, 2009) (same); *Thomas v. Avis Budget Group LLC*, 2009 WL 2767719, at \*2 (C.D. Cal. Aug. 26, 2009) (same); *Bibo v. Fed. Express, Inc.*, 2009 WL 1068880, at \*14 (N.D. Cal. Apr. 21, 2009) (same); *Gabriella v. Wells Fargo Financial, Inc.*, 2009 WL 188856, at \*1 (N.D. Cal. Jan. 26, 2009) (same).

## **B. [REDACTED] Good Cause Exists For A Stay of These Proceedings.**

As explained above and below, good cause exists for, and all of the relevant factors set forth in *Landis, supra*, 299 U.S. at 254-255 weigh in favor of, staying these District Court proceedings pending approval and resolution by the state court in *Vaquero II* of the global class-wide settlement

### **1. [REDACTED] No Damage Will Be Caused If a Stay Is Issued.**

The Parties agree that there is no legitimate damage that would be suffered by either Party if a further stay is issued pending approval and resolution by the state court in *Vaquero II* of the global class-wide settlement. Indeed, it will avoid confusion to the class members, avoid inconsistent rulings and judgments, and will conserve judicial resources. Indeed, that the Parties are jointly filing this request concedes that fact insofar as neither Party would agree to a stay if they reasonably believed it could cause any damage.

And, as explained throughout this application, the Parties agree that a stay would actually be helpful to the Court and the Parties by potentially conserving valuable resources and avoiding any confusion to the class members. Thus, no damage will be caused to the Parties or the classes if a stay is issued.

### **2. The Hardship or Inequity Which The Parties May Suffer If A Stay Is Not Issued.**

If a stay is not issued, the Parties will have to potentially break up the global settlement and seek approval of same in two separate courts. This will require the

unnecessary expenditure of significant resources, create the potential of conflicting rulings and/or judgments, place settlement on two different timelines and require two courts to expend resources addressing the same issue.

**3. A Stay Would Result In An Orderly Course Of Justice  
Because Only One Court Would Have to Assess The  
Fairness Of The Global Class-Wide Settlement.**

By staying these proceedings pending approval and resolution by the state court in *Vaquero II* of the global class-wide settlement, the Court can avoid confusing class members, and can conserve its time and resources and avoid the potential of issuing rulings which might conflict with the Court in *Vaquero II*.

**II. CONCLUSION**

For all of the reasons set forth herein, the Parties jointly request that this Court vacate all pending dates, and stay all proceedings in this District Court pending approval and resolution by the state court in *Vaquero II* of the global class-wide settlement.

Dated: October 24, 2017

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Dated: October 24, 2017

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